

SENATE BILL 221

D3

2lr0698

By: ~~Senator Frosh~~ **Senators Frosh, Brochin, Forehand, and Raskin**

Introduced and read first time: January 20, 2012

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 12, 2012

CHAPTER _____

1 AN ACT concerning

2 **Courts and Judicial Proceedings – Strategic Lawsuits Against Public**
3 **Participation**

4 FOR the purpose of establishing certain burdens of proof and procedures in an alleged
5 strategic lawsuit against public participation (SLAPP) suit; requiring a court to
6 consider certain evidence and pleadings in ruling on a motion to dismiss or to
7 stay an alleged SLAPP suit; providing for the effect of a certain finding;
8 authorizing the Office of the Attorney General, or a certain government body to
9 which a certain communication was directed, to intervene to defend or support a
10 certain party in an alleged SLAPP suit; requiring a court to stay any discovery
11 and pending hearings or motions in an alleged SLAPP suit on the filing of a
12 motion to dismiss or to stay and until the court rules on the motion; ~~requiring a~~
13 ~~court to award certain attorney's fees, costs, and other relief under certain~~
14 ~~circumstances~~; altering a certain definition; defining certain terms; providing
15 for the application of this Act; and generally relating to SLAPP suits.

16 BY repealing and reenacting, with amendments,
17 Article – Courts and Judicial Proceedings
18 Section 5–807
19 Annotated Code of Maryland
20 (2006 Replacement Volume and 2011 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 **Article – Courts and Judicial Proceedings**

2 5–807.

3 [(a) In this section, “SLAPP suit” means a strategic lawsuit against public
4 participation.

5 (b) A lawsuit is a SLAPP suit if it is:

6 (1) Brought in bad faith against a party who has communicated with a
7 federal, State, or local government body or the public at large to report on, comment
8 on, rule on, challenge, oppose, or in any other way exercise rights under the First
9 Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the
10 Maryland Declaration of Rights regarding any matter within the authority of a
11 government body or any issue of public concern;

12 (2) Materially related to the defendant’s communication; and

13 (3) Intended to inhibit or inhibits the exercise of rights under the First
14 Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the
15 Maryland Declaration of Rights.]

16 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
17 MEANINGS INDICATED.

18 (2) “CLAIM” INCLUDES A CIVIL ACTION, CROSS-CLAIM,
19 COUNTERCLAIM, OR OTHER JUDICIAL PLEADING OR FILING REQUESTING
20 RELIEF.

21 (3) (I) “ISSUE OF PUBLIC CONCERN” MEANS AN ISSUE
22 RELATED TO:

23 1. HEALTH OR SAFETY;

24 2. ENVIRONMENTAL, ECONOMIC, OR COMMUNITY
25 WELL-BEING;

26 3. FEDERAL, STATE, OR LOCAL GOVERNMENT; OR

27 4. ~~A PUBLIC FIGURE; OR~~

28 5. A GOOD, PRODUCT, OR SERVICE IN THE
29 MARKETPLACE.

1 **(II) “ISSUE OF PUBLIC CONCERN” DOES NOT INCLUDE**
2 **PRIVATE INTERESTS, SUCH AS PROTECTING THE SPEAKER’S COMMERCIAL**
3 **INTERESTS.**

4 **(4) “SLAPP” SUIT OR “STRATEGIC LAWSUIT AGAINST PUBLIC**
5 **PARTICIPATION” MEANS A CLAIM ARISING FROM:**

6 **(I) A WRITTEN OR ORAL STATEMENT MADE:**

7 **1. IN CONNECTION WITH AN ISSUE UNDER**
8 **CONSIDERATION OR REVIEW BY A FEDERAL, STATE, OR LOCAL GOVERNMENT**
9 **BODY; OR**

10 **2. TO THE PUBLIC IN CONNECTION WITH AN ISSUE**
11 **OF PUBLIC CONCERN; OR**

12 **(II) ANY OTHER EXPRESSION OR EXPRESSIVE CONDUCT**
13 **THAT INVOLVES PETITIONING THE GOVERNMENT OR COMMUNICATING TO THE**
14 **PUBLIC IN CONNECTION WITH AN ISSUE OF PUBLIC CONCERN.**

15 **[(c)] (B)** A defendant in a SLAPP suit is not civilly liable for communicating
16 with a federal, State, or local government body or the public at large, if the defendant,
17 without constitutional malice, reports on, comments on, rules on, challenges, opposes,
18 or in any other way exercises rights under the First Amendment of the U.S.
19 Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of
20 Rights regarding any matter within the authority of a **FEDERAL, STATE, OR LOCAL**
21 government body or any issue of public concern.

22 **[(d)] (C) (1)** A defendant in an alleged SLAPP suit may move to:

23 **[(1)] (I)** Dismiss the alleged SLAPP suit, in which case the court
24 shall hold a hearing on the motion to dismiss as soon as practicable; or

25 **[(2)] (II)** Stay all court proceedings until the matter about which the
26 defendant communicated to the government body or the public at large is resolved.

27 **(2) (I) A PARTY BRINGING A MOTION TO DISMISS OR A MOTION**
28 **TO STAY UNDER THIS SUBSECTION SHALL BEAR THE INITIAL BURDEN OF**
29 **MAKING A PRIMA FACIE SHOWING THAT THE LAWSUIT IS A SLAPP SUIT.**

30 **(II) IF THE MOVING PARTY MEETS THE INITIAL BURDEN**
31 **DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE RESPONDING**
32 **PARTY SHALL BEAR THE BURDEN OF ESTABLISHING A PROBABILITY OF**
33 **PREVAILING IN THE LAWSUIT BY PRESENTING ~~SUBSTANTIAL~~ EVIDENCE TO**
34 **SUPPORT A PRIMA FACIE CASE.**

1 (III) IF THE RESPONDING PARTY MEETS THE BURDEN
2 DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COURT SHALL
3 DENY THE MOTION.

4 (3) IN RULING ON A MOTION TO DISMISS OR A MOTION TO STAY
5 UNDER THIS SUBSECTION, THE COURT SHALL CONSIDER PLEADINGS,
6 SUPPORTING AFFIDAVITS, AND OPPOSING AFFIDAVITS THAT STATE THE FACTS
7 ON WHICH THE LIABILITY OR DEFENSE IS BASED.

8 (4) IF THE COURT FINDS THAT THE RESPONDING PARTY HAS
9 ESTABLISHED A PROBABILITY OF PREVAILING IN THE LAWSUIT:

10 (I) THE FACT THAT THE FINDING HAS BEEN MADE AND THE
11 SUBSTANCE OF THE FINDING IS NOT ADMISSIBLE IN EVIDENCE AT ANY LATER
12 STAGE IN THE LAWSUIT; AND

13 (II) THE FINDING MAY NOT AFFECT THE BURDEN OF PROOF
14 APPLIED IN THE LAWSUIT.

15 (5) THE OFFICE OF THE ATTORNEY GENERAL, OR ANY
16 GOVERNMENT BODY TO WHICH THE MOVING PARTY'S COMMUNICATION WAS
17 DIRECTED, MAY INTERVENE TO DEFEND OR SUPPORT THE MOVING PARTY.

18 (D) (1) THE COURT SHALL STAY DISCOVERY AND ANY PENDING
19 HEARINGS OR MOTIONS IN THE LAWSUIT ON THE FILING OF A MOTION TO
20 DISMISS OR A MOTION TO STAY UNDER SUBSECTION (C) OF THIS SECTION.

21 (2) A STAY UNDER THIS SUBSECTION SHALL REMAIN IN EFFECT
22 UNTIL THE COURT RULES ON ~~A~~ THE MOTION TO DISMISS OR THE MOTION TO
23 STAY ~~UNDER SUBSECTION (C) OF THIS SECTION.~~

24 (3) NOTWITHSTANDING A STAY ORDERED UNDER THIS
25 SUBSECTION, THE COURT, ON MOTION AND FOR GOOD CAUSE SHOWN, MAY
26 ORDER DISCOVERY OR OTHER HEARINGS OR MOTIONS TO BE CONDUCTED.

27 ~~(E) (1) THE COURT SHALL AWARD A MOVING PARTY WHO PREVAILS
28 ON A MOTION TO DISMISS UNDER SUBSECTION (D) OF THIS SECTION, WITHOUT
29 REGARD TO ANY LIMITS UNDER STATE LAW;~~

30 ~~(I) LITIGATION COSTS AND REASONABLE ATTORNEY'S FEES
31 IN CONNECTION WITH THE MOTION TO DISMISS UNDER SUBSECTION (C) OF THIS
32 SECTION; AND~~

1 ~~(H) ANY ADDITIONAL RELIEF, INCLUDING SANCTIONS ON~~
2 ~~THE RESPONDING PARTY AND ITS ATTORNEYS, AS THE COURT FINDS~~
3 ~~NECESSARY TO DETER REPETITION OF THE CONDUCT BY OTHERS SIMILARLY~~
4 ~~SITUATED.~~

5 ~~(2) IF THE COURT FINDS A MOTION TO DISMISS UNDER~~
6 ~~SUBSECTION (C) OF THIS SECTION IS FRIVOLOUS OR SOLELY INTENDED TO~~
7 ~~CAUSE UNNECESSARY DELAY, THE COURT SHALL AWARD REASONABLE~~
8 ~~ATTORNEY'S FEES AND LITIGATION COSTS TO THE RESPONDING PARTY.~~

9 ~~{(e)}~~ (F) This section:

10 (1) Is applicable to SLAPP suits notwithstanding any other law or
11 rule; and

12 (2) Does not diminish any equitable or legal right or remedy otherwise
13 available to a defendant in a SLAPP suit.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
15 construed to apply only prospectively and may not be applied or interpreted to have
16 any effect on or application to any cause of action arising before the effective date of
17 this Act.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2012.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.